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VIA E-MAIL

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Hon. Jesse M. Furman
United States District Court for the Southern
District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: Citibank, N.A. v. Brigade Capital Management, LP, No. 1:20-cv-06539

Dear Judge Furman:

We represent Brigade Capital Management, LP (“Brigade”), the defendant in this action. Brigade does not attempt here to respond to Citibank’s various assertions in its letter to the Court because the controlling case law is clear and the Court did not invite any replies.

To the extent the Court accepts Citibank’s late submission, Citibank’s various factual assertions, which are both unsupported by admissible evidence and factually wrong, should not be considered. Additionally, Citibank’s new argument that constructive knowledge is sufficient to defeat application of the “discharge for value” doctrine is wrong. For example, in *Regatos v. North Fork Bank*, 5 N.Y.3d 395 (2005), the New York Court of Appeals answered the Second Circuit’s certified question, “In the absence of agreement, does New York U.C.C. Article 4–A”—the express provision relied upon by Citibank in its reply—“require actual notice, rather than merely constructive notice?” *Id.* at 400-01. The Court held that constructive notice was plainly insufficient as to the dispute between bank and accountholder over unauthorized payments, explaining, “Policy arguments support an actual notice requirement. An invariable statutory rule provides a bright line for banks and their customers, bringing reliability and certainty to these dealings.” *Id.* at 405.

Respectfully submitted,
/s/ Robert S. Loigman
Robert S. Loigman

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